

From: KUSERLIAN, LUCAS and MERCANTI 1 212 661 8002

02/02/2005 14:47 #571 P.001/004

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Our ref: ALI-3

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In re Application of: Benjamin Wong : Art Unit:3727  
Serial No. : 10/666,071 : Examiner:R.A.  
Filed: September 19, 2003 : Hylton  
Title : FOOD CONTAINER WITH : Dated: February 2,  
POP-OPEN LID : 2005  
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REQUEST FOR REISSUANCE OF OFFICE ACTION

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**Certification of Facsimile Transmission**

I hereby certify that it is paper  
is being facsimile transmitted to  
the Patent and Trademark Office  
on February 2, 2005

Donald C. Lucas  
For Donald C. Lucas Julie A. Bush  
Reg. No. 31,276 Reg. No. 33,508

S i r:

Applicant hereby renews its request to reissue the outstanding Office Action in this case in accordance with MPEP 707.13, namely, the Examiner should stamp the Office Action "Remailed" with a date of January 31, 2005 in accordance with the procedure set down in Section 707.13 of the MPEP.

On January 27, 2005, Applicant filed a Request to reissue an Office Action which was allegedly issued on September 29, 2004. Applicant also telephoned the Examiner to make such a Request, however, Applicant only received the Examiner's voice-mail and Applicant left a Request on the Examiner's voice-mail. On January 31, 2005, the Examiner faxed a copy of the Office Action along with an Interview Summary Record making of record the fact that the Office Action had been returned to the PTO in October 8, 2004. In accordance with MPEP 707.13, the Examiner should have made a reasonable inquiry to ascertain the correct address of Applicant's below-signed attorney. As noted in Applicant's previous Request, a Change of Address had been filed against Applicant's Customer Number and the Customer Number had been associated with this Application when it was filed back in September 2003. Since the Examiner has faxed a copy of the Office Action to Applicant's below-signed attorney on January 31, 2005, it is submitted that this Action of faxing constitutes a "Remailing" in accordance with MPEP 707.13 and, thus, the Office Action should be treated as Remailed on January 31, 2005. Thus, in accordance with 37 CFR 1.135(a), it is submitted that this Application should not be abandoned, the Patent Office

should follow the procedure outlined in 707.13 of the MPEP and remail the Office Action with a date of January 31, 2005. Furthermore, it is noted that the faxed copy of the September 30, 2004 Office Action was not complete because it did not contain any of the attachments.

If, for any reason, this Request is not granted, it is respectfully requested that this Request, as well as Applicant's previously filed Request, be treated as a Petition to Withdraw any Holding of Abandonment and the fee associated with such a Petition in accordance with 37 CFR 1.17(l), unavoidable abandonment, be charged to Applicant's Deposit Account noting that Applicant is a Small Entity. Applicant's submit that statements made in this Request, as well as in the Interview Summary Record and the Request filed January 27, 2005, are the necessary showing under 1.137(a).

In view of the foregoing, it is respectfully submitted that the Application should not be treated as abandoned but, rather, the time period to respond to the outstanding Office Action restarted on January 31, 2005.

From: MUSERLIAN, LUCAS and MERCANTI 1 212 661 8002

02/02/2005 14:48 #571 P.004/004

Should any additional Petitions, fees, or extensions of time be necessary in order to maintain this Application in pending condition, appropriate requests are hereby made and authorization is given to debit account #02-2275.

Respectfully submitted,

MUSERLIAN, LUCAS AND MERCANTI, LLP

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